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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/100,516 06/19/98 KASTER

L 3038240/5847

026386 HM22/0705  
DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.  
THE FINANCIAL CENTER  
666 WALNUT STREET  
SUITE 2500  
DES MOINES IA 50309-3993

 EXAMINER

BENZION, G

ART UNIT	PAPER NUMBER
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1638 15

DATE MAILED:

07/05/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/100,516	KASTER ET AL.
	Examiner	Art Unit
	Gary Benzion	1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 April 2001 .

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) 12-20 and 24 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 and 21-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13 .

18) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

19) Notice of Informal Patent Application (PTO-152)

20) Other: \_\_\_\_\_

*Status of the Application*

Claims 1-24 are pending and claims 12-20 and 24 have been withdrawn from further action as drawn to an invention elected with traverse.

A complete response to this final rejection must include cancellation of non-elected claims or other appropriate action (37 CFR 1.144) MPEP 821.01.

Claims 1-11 and 21-23 are under examination

*Detailed Action*

Claims 1, newly amended, is rejected, and claims 2-11 and 21-23 remain rejected under 35 U.S.C § 103 as being unpatentable over Spencer et al. in view of Hall, in view of the reasons set forth in the previous Office Action.

Applicants argue that Spencer et al fails to teach that the herbicide would act to inhibit the pollen. Applicants' arguments have been carefully considered and are not deemed persuasive. With regards to the effects of herbicides on pollen Spencer et al. teach:

The progeny maize plants having resistance to glyphosate may be selected by testing plants for resistance to glyphosate at an application rate of 1.times. (1.times. is equivalent to 16 ounces of Roundup.TM. per acre). The progeny maize plants having resistance to glyphosate may be selected by testing plants for resistance to glyphosate at an application rate of 4.times.. In a particular embodiment, the second fertile maize plant is a non-transgenic maize plant. The second fertile maize plant may be pollinated with pollen from a male parental transgenic maize plant. The parental maize plant may be pollinated with pollen from said second fertile maize plant and wherein said parental maize plant is a female parental transgenic maize plant.

Thus Spencer et al. teach the application of herbicides to plants which inherently must segregate for resistance to said herbicide if the transgenic plant is chimeric or the gene is not expressed. The application of the herbicide to a plant and then the use of the pollen from that plant would inherently inhibit pollen function if non-resistant pollen was present in the treated plant.

Accordingly the rejection is maintained.

*Summary*

No claim is allowed.

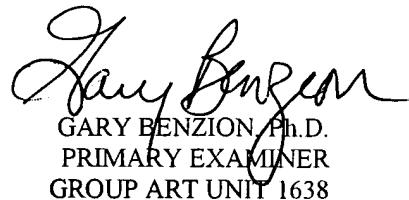
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

*Inquires*

Any inquiry concerning this or earlier communication from the examiner should be directed to Gary Benzion, Ph.D. whose telephone number is (703) 308-1119. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703)-308-4310. Any inquiry of a general nature or relating to the status of this application should be directed to the Patent Analysts, Gwendolyn Payne, whose telephone number is (703) 305-2475. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Benzion  
06/28/01



GARY BENZION, Ph.D.  
PRIMARY EXAMINER  
GROUP ART UNIT 1638